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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1039

W. J. DILLNER TRANSFER COMPANY, a Corporation,
Petitioner,

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Dated April 22, 1963.

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Petitioner W. J. Dillner Transfer Company, prays that a writ of Certiorari issue to review a criminal conviction in the District Court for the Western District of Pennsylvania, affirmed by the Court of Appeals for the third Circuit by judgment denying reargument dated March 26, 1963.

OPINION BELOW

The formal opinion of the Court below was filed Mar. 6, 1963, but no citation is available yet. A copy is annexed.

JURISDICTION

This Court has jurisdiction of this proceeding under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Will the opinion below create a conflict between the Court of Appeals decision in the 5th circuit in the *U. S.* v. *English* 136 Fed. 2nd, 885, (1944) which was not appealed by the government. Thus we may have one rule in the 5th Circuit and a different one in the 3rd Circuit.

2. Does the opinion below conflict with the decision in *Movers Conference of America Inc., et al* v. *U. S.* 205 Fed. Supp. 84, holding that the commission has no power to make rules which would restrict the scope of a previously granted Certificate. This petitioner obtained full authority to serve all points in New Jersey on June 1, 1948, without restrictions as to Commercial Zones, while this prosecution was and is conducted under a rule making decision issued by the Commission in 1952, four years later. Recent decisions, accepted by the government in other districts hold that a Certificate may not be subsequently restricted regardless of its "grand-father" status. This petitioner was also a "grand-father" carrier and could not be restricted by subsequently established restrictions unless they were shown in its certificates.

3. Did the opinion below err in determining the question of "knowingly and willfully" committing the

violations here involved without according proper and sufficient weight to a decision in *Kulp & Gordon* v. *U. S.* 144 Fed. Supp. 456.

4. The questions involved are of national transportation importance and should be determined upon full consideration of each and every element thereof.

STATUTES INVOLVED

Section 206 of the Interstate Commerce Act. (306 U.S.C. Title 49).

Section 222 (a) of the Interstate Commerce Act, (332 U.S.C.).

Section 212 (a) of the Commerce Act, (312 U.S.C.).

PROCEEDINGS BELOW

The government filed criminal counts against petitioner for alleged unlawful transportation of property for hire from Fairless and Plymouth Meeting, Pa. (suburbs of Trenton, N. J. and Philadelphia, Pa.) no question was raised as to specific commodities the issue was territorial. Petitioner a common carrier by motor truck was granted two I. C. C. certificates, one in 1942 and another in 1948. Both of these grants related to and included points in New Jersey on various commodities. Petitioner has never been restricted as to service from and to entire commercial zones until this proceeding was instituted.

Petitioners motions to dismiss were denied by the trial Court and a trial was had before a jury which resulted in conviction. A motion for new trial was denied. The judgment of conviction and sentence was appealed to the Court of Appeals for the third Circuit and the judgment below was affirmed and motion for re-argument was denied.

BRIEF STATEMENT OF REASONS FOR GRANTING PETITION

The appendix filed herewith contains a comprehensive brief in support of petitioners position, however, counsel wishes to point out the following in brief form.

(a) The trial Court did not have before it the decision in *Movers Conference of America* v. *U. S.* 205 Fed. Supp. 84 and the appellate Court appears to have ignored it.

(b) The appellate Court disposes of the decision in *U. S. v. English* 139 Fed. 2nd 885 by merely saying "has not been followed and we think it is unsound". Counsel has found that the Interstate Commerce Commission accepted the English decision without any attempt to review it. Repudiation of the *English* decision by the government at this late date results in conflict and confusion.

(c) The action of the Commission in ordering the prosecution of your petitioner without serving that order upon petitioner was clearly a failure in procedure.

(d) The prosecution of petitioner under a rule making order that was made four years subsequent to your petitioners last Certificate, (issued without restriction as to Commercial Zones) creates a very dangerous precedent in that it condones ex post facto restrictive rules and orders, made by Federal Regulatory Agencies. Such governmental policies are destructive and derogatory to the true administration of justice. The com-

mission has not finally decided petitioners pending question.

(e) The Commission in all fairness should have given petitioner an adequate hearing for the purpose of determining whether the previously issued Certificates should be restricted. Petitioner's application for relief to the Interstate Commerce Commission in M.C. 21623 Sub. 81 has not answered the question.

(f) The questions involved are few and relatively simple but the far reaching consequences of the resulting conflicts of law are of broad nation wide import.

(g) Petitioner is being prosecuted for defending its rights. The Court below was obviously confused (page 2 second paragraph of opinion), "we think it clear that the fact that no administrative proceeding is pending to establsh "grandfather" rights is not an element of the statutory offense of operating without an authorizing certificate". The Court fails to recognize that the Certificate issued to petitioner in 1948 was an extension of its "grand-father rights". See *Peter Verbeem et al* v. *U. S.* 356 U.S. 676. Petitioner did have an original "grand-father" proceeding in 1942 and it resulted in a Certificate *without* Commercial Zone restrictions, and the 1948 Certificate was likewise issued unrestricted, as to New Jersey. The administrative question is still undecided.

Wherefore, the petitioner prays that this petition be granted and the decision below be reviewed.

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Dated April 22, 1963.